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Supreme Court of the United States

October Term, 1953

No. [redacted] 28

EVELYN RICE,

Petitioner,

vs.

SIOUX CITY MEMORIAL PARK CEMETERY, INCORPORATED, A Corporation; F. K. LYTLE, and J. M. GUNNELL

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

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COCHLE PRINTING CO., LAW BRIEFS, OMAHA

BRIEF IN SUPPORT OF PETITION

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OPINIONS DELIVERED IN COURTS BELOW

The decision of the Supreme Court of Iowa herein sought to be reviewed may be found in 60 N. W. 2d 110 (Iowa 1953).

The decision of the United States District Court remanding the case to the State Court may be found in 102 Federal Supplement 658.

STATEMENT OF GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

1. This is a case where rights and privileges are claimed under the United States Constitution and under a treaty of the United States Government properly pleaded in all stages of litigation.

2. The District and Supreme Courts of Iowa have made a direct interpretation and application of the Fourteenth Amendment to the United States Constitution adverse to the rights of this petitioner and contrary to the principles hereinbefore established or indicated by this Court.

3. The District and Supreme Courts of Iowa have made a direct ruling on and interpretation of the applicability of the United Nations Charter, which is a treaty of the United States Government, and such ruling was adverse to the rights of this petitioner and contrary to the principles indicated by this Court, and contrary to a fair interpretation of the United Nations Charter and its purposes.

4. The District and Supreme Courts of Iowa have interpreted and ruled on the public policy of the United States Government adverse to the rights of this petitioner and contrary to the pronouncements of that policy by this Court.

5. The precise question of whether a restrictive covenant may be successfully raised as a defense to a damage action has never before been determined by this Court, and the decision by the Iowa Courts is erroneous and is

a Federal question of considerable substance and great public importance.

STATEMENT OF THE CASE

Petitioner signed a written contract with the cemetery for the purchase of burial lots (R. 13), one of which was to be used for the burial of her husband, Sergeant John Rice, who had been killed in the Korean War. A clause in this contract restricted burial privileges to members of the Caucasian Race (R. 14). Sergeant Rice was 11/16 Winnebago Indian.

The body was returned from Korea, funeral arrangements were made and funeral services were had in the church at Winnebago, and the funeral procession then proceeded from Winnebago to the Sioux City Memorial Park Cemetery where graveside services were held; whereupon the family and friends left the cemetery and returned to their home, leaving the casket over the open grave and with the belief that it would be buried (R. 5, 6). Thereafter petitioner was notified that the cemetery refused to permit the burial because her husband was not a member of the Caucasian Race (R. 6). Shortly thereafter the cemetery asked petitioner to sign an affidavit stating that her husband was a member of the Caucasian Race, and she refused (R. 7). Thereupon the President of the United States intervened and an offer was made and accepted to have the body sent to Arlington National Cemetery in Washington where the final services were held (R. 7).

On December 12, 1951 petitioner filed her damage action in the District Court of Iowa, in and for Woodbury County, seeking damages for mental suffering and humiliation caused by the acts above recited (R. 4). Thereupon the cemetery sought removal to the Federal Court, and, after a hearing, the case was remanded to State Court. See 102 Fed. Supp. 658. Thereupon the cemetery filed its answer (R. 21, 22, 23) and petitioner filed her first amendment to her petition (R. 23, 24, 25). The cemetery then filed its motion to dismiss the plaintiff's petition as amended and in the alternative filed its answer (R. 25, 26, 27). Petitioner then filed her second amendment to her petition (R. 27, 28) which was answered by the cemetery (R. 28). The Trial Court then overruled the cemetery's motion to dismiss (R. 28, 29). Thereupon both parties sought an adjudication of law points prior to trial (R. 29, 30, 31, 32, 33). The Court did adjudicate the law points (R. 33, 34, 35, 36). In this adjudication of law points the Trial Court held that the action of the State or Federal Court in permitting the cemetery to defend on the basis of the restrictive covenant is not a violation of the Fifth or Fourteenth Amendments to the United States Constitution (R. 34, 35, 36). Also the Trial Court specifically ruled that the restrictive clause in the contract could be relied upon as a defense by the cemetery (R. 36). The Trial Court also ruled that the United Nations Charter has no legal effect on the rights of the parties to this litigation (R. 36). The question of the applicability of the Fifth and Fourteenth Amendments to the United States Constitution and of the United Nations Charter and the public policy of the United States have been prop-

erly pleaded and were accordingly acted upon (R. 23, 24, 25, 27).

Following the adjudication of law points adversely to the rights of this petitioner, a second adjudication of the remaining law points not here involved was made adversely to this petitioner (R. 39-43, incl.). Thereafter appeal was taken to the Supreme Court of Iowa, and that Court affirmed the Trial Court in all respects and held that the cemetery can raise the restrictive covenant as a defense to this action and that such a ruling does not become such a state action as is in violation of the Fourteenth Amendment to the United States Constitution or the United Nations Charer or the public policy of the United States Government (R. 63). Thereafter petitioner filed her petition for a rehearing (R. 78), and that rehearing was denied after oral argument (R. 105).

—o—

SPECIFICATION OF ASSIGNED ERRORS INTENDED TO BE URGED

The ruling of the Supreme Court of Iowa that the cemetery can use the restrictive covenant as a defense to this damage action becomes such state action as is in violation of:

(1) The due process clause of the Fourteenth Amendment to the United States Constitution.

(2) The equal protection clause of the Fourteenth Amendent to the United States Constitution.

(3) The Preamble and Chapter 1, Article 3, Chapter 4, Article 13(b), and Chapter 9, Articles 55 and 56 of the United Nations Charter.

(4) The public policy of the United States Government.

———o———

ARGUMENT

MAY IT PLEASE THE COURT:

A summary of this argument is that, while the use of the restrictive covenant in a contract between private individuals or a private corporation and an individual is not void or illegal or prohibited by any constitution, treatries, or laws, yet, nonetheless, that same racially restrictive covenant cannot be used either affirmatively or negatively, either directly or indirectly, once voluntary adherence to its terms has disappeared and the matter is before either the Federal or the State Courts.

It is argued here specifically that for a State Court to allow such a racially restrictive covenant to be used as a defense to this damage action amounts to and is the giving of a stamp of approval by the State Court to the racially restrictive covenant, and such approval becomes an act of the State in contravention of petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, under the United Nations Charter, which is a treaty of the United States Government, and under the public policy of the United States.

We urge further that such conduct by the Supreme Court of the State of Iowa is equally offensive to the Constitution, treaty, and policy of the United States Government as would be their conduct in specifically enforc-

ing such a covenant or in allowing damages to be recovered for a violation of such a covenant.

We conclude by showing that discrimination because petitioner, a white woman, married an American Indian is the only logical result of the Court's ruling.

The first proposition to which we direct the Court's attention concerns the Iowa Court's interpretation and application of both the due process and the equal protection clauses of the Fourteenth Amendment to the United States Constitution to the facts involved in this litigation.

The gist of the Iowa Court's ruling is that, in the instant case, the Court has maintained neutrality and the State of Iowa has not lent its support to the racially restrictive covenant in question, and that to hold as the peitioner asked them to would result in a dangerous expansion of the Fourteenth Amendment. *Rice v. Memorial Park Cemetery,* R. 69, 70, 71. To this pronouncement petitioner states, first, that the State of Iowa has by this ruling given its stamp of approval and vitality to the racially restrictive covenant in question; and, further, that we are not seeking any dangerous extension of the Fourteenth Amendment but are seeking only to apply the established rules interpreting the Fourteenth Amendment.

The Fourteenth Amendment is to be construed liberally because it refers to rights of persons and property. *Byars v. United States,* 273 U. S. 28.

> "The historical context in which the Fourteenth Amendment became a part of the Constitution should not be forgotten. Whatever else the framers sought to achieve, it is clear that the matter of primary concern was the establishment of equality in the en-

joyment of basic civil and political rights and the preservation of those rights from discriminatory action on the part of the States based on considerations of race or color. Seventy-five years ago this Court announced that the provisions of the Amendment are to be construed with this fundamental purpose in mind."

Shelley v. Kraemer, 334 U. S. 1 at 23.

As stated in the case of *Hurd v. Hodge*, 334 U. S. 24, the question of a violation of the Constitution (in that case referring to the Fifth Amendment) is to be determined "not for any narrow technical reason, but for considerations that touch rights so basic to our society that, after the Civil War, their protection against invasion by the States was safeguarded by the Constitution."

Starting then with this fundamental and unswerving rule that the due process and equal protection clauses are to be construed liberally to effect their purposes, we turn to the applicable decisions concerning racially discriminative covenants, and again we find that the Iowa Court has not only refused to give a broad interpretation to the Fourteenth Amendment but it has also ignored the clear mandate of recent decisions by this Court.

Commencing in 1948 new and vital strength was given to the equal protection clause of the Fourteenth Amendment in the case of *Shelley v. Kraemer*, 334 U. S. 1, and to the Fifth Amendment in *Hurd v. Hodge*, 334 U. S. 24. In both of these cases this Court held that judicial sanction of a racially discriminatory covenant in a deed by means of specific performance is prohibited by the Fourteenth Amendment as it pertains to state action and by the Fifth Amendment as it pertains to federal action. In

those decisions—both of which refuse to pass upon the due process question because it was not necessary—the Court gave life to the broad meaning and purpose of the Constitutional Amendments in question and found no difficulty in holding that a decree of specific performance would amount to state action in the *Shelley* case prohibited by the Fourteenth Amendment under the equal protection clause, and in the *Hurd* case that a similar decree by a Federal Court would constitute a violation of the applicable provision of the Fifth Amendment.

Litigants and attorneys then attempted to confirm the decision in those cases by claiming that a violation of the racially restrictive covenant in a deed would give support to an action for damages and that, if a State Court would allow the recovery of such damages, it would not constitute state action prohibited by the Fourteenth Amendment. *Phillips v. Naff*, 52 N. W. 2d 158 (Mich.). And similar attempts in other states were finally resolved by this Court in the case of *Barrows v. Jackson*, 346 U. S. 249, decided by this Court on June 15, 1953. In *Barrows v. Jackson* this Court held that, if a state were to allow damages to be recovered for violation of a racially restrictive covenant, that would amount to state action prohibited by the Fourteenth Amendment. This Court stated that the allowance of damages would be "solely for the purpose of giving vitality to the restrictive covenant; that is to say, to punish respondent for not continuing to discriminate against non-Caucasians * * *." This Court then indicated that it would not allow a State Court to accomplish indirectly what it could not accomplish directly under the *Shelley* case or what could not be

enforced in the federal jurisdiction because it would be contrary to public policy under the *Hurd* case.

It therefore appears that the Iowa Court has closed its eyes to the true policy announced by this Court in the *Shelley* and *Hurd* cases and so recently announced by this Court in the *Barrows* case and has refused to follow the final rulings by this Court as to the true meaning of the equal protection clause in the Fourteenth Amendment. If some would say that the instant case is one step removed from the *Shelley* and *Hurd* cases, they are closing their eyes to the reality and full meaning of the cases hereinabove cited and are giving a narrow technical construction to the Fourteenth Amendment when instead they should be giving it a liberal one. In all events, it is but a logical step to go from the *Barrows* case to the instant one and realize that the Iowa Court's ruling likewise has given vitality to the restrictive covenant, even though it may have done so by indirection.

If petitioner is to lose this action as she has in the Iowa Courts, it is because of a racially restrictive covenant which, under the *Shelley, Hurd,* and *Barrows* cases, cannot be given life directly or indirectly by a State or Federal Court. Conversely, if the cemetery is to win as it has in the Iowa Courts, it is because it may use this racially restrictive covenant as a shield to defend against what would otherwise make them respond in damages to one who had married a non-Caucasian. The Iowa Court has admitted that it could not specifically enforce this restrictive covenant, as has the cemetery, because of *Shelley v. Kraemer.* The *Barrows* case was not before the Iowa Court, but, since it has been decided, the Iowa Court

now would likewise have to hold that no damages could be recovered by the cemetery for violation of this racially restrictive covenant. It is but a logical conclusion and sequence to state that neither should the Iowa Court hold that the cemetery can use the objectionable covenant as a defense in any of the three situations. The claim to a justification for the conduct objected to stems from a racially restrictive covenant so, if the rights of the parties are to be determined on the strength of such a covenant, it is equally objectionable whether it be by direct or indirect action, and that is precisely what the *Barrows* case held and what the Iowa Court should have held here.

We direct the Court's attention to the fact that rights under the due process clause have not as yet been determined in cases of this type, and we would suggest that if, for any reason, there is some hesitation concerning the applicability of the equal protection clause, then this might be the appropriate place for a determination under the due process clause that the State Courts of Iowa have violated the rights and privileges guaranteed to petitioner.

It is inescapable that the Iowa Court has given vitality to a legally offensive covenant and has given judicial sanction to discrimination.

The next proposition to which we address our remarks is that the Iowa Court has directly ruled upon and interpreted the United Nations Charter in a manner adverse to the rights of this petitioner and contrary to a fair interpretation of the Charter and its purposes and contrary to law.

The gist of the Iowa Court's holding is that the treaty has no application to the private conduct of individual citizens of the United States and that the treaty does not supersede the Iowa laws relating to contracts and that, consequently, the Charter had no bearing on the case (R. 71, 72).

Petitioner does not urge that the Charter, or any other treaty, is intended to affect the private conduct of individuals any more than is the Constitution. We do not urge that the cemetery's conduct violated the United Nations Charter, nor do we say that the cemetery's conduct violated the Constitution. If petitioner had voluntarily acquiesced in the conduct of the cemetery, or if the petitioner and the cemetery voluntarily acquiesced in and complied with the terms of the restrictive covenant, no one would complain and they would not be violating a law or a treaty. But here there is no voluntary acquiescence and, because one of the parties has refused to comply with the racially restrictive covenant on a voluntary basis, the matter has been presented to Court and the question is whether the Iowa Court has violated the United Nations Charter.

Under Article 6 of the United States Constitution, treaties become the supreme law of the land and the judges in every state are bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

For the Iowa Court to say that a treaty does not abrogate state laws is completely erroneous and contrary to the written words of the Constitution.

The question rather is whether the United Nations Charter, which is a solemn treaty of the United States Government, has some provisions which control the Iowa Courts in this case.

The United Nations Charter in its *Preamble* recites as follows:

> "We the peoples of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims. * * *"

Turn then to *Chapter 1, Article 1,* Subparagraphs (2) and (3), and we find as follows:

> "The Purposes of the United Nations are: * * *
>
> "2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

"3. To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; * * *"

Turning then to *Chapter IX, Articles 55 and 56* of the Charter we find the following:

"Article 55

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people, the United National shall promote; * * *

"c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."

"Article 56

"All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55."

We will come back to the wording of the Charter, but first we should like to discuss the applicable rules for the interpretation and effect of treaties. Perhaps the leading case is *Missouri v. Holland*, 251 U. S. 415, wherein Mr. Justice Holmes, referring to the Migratory Bird Treaty between the United States and Canada after a Congressional attempt at control was declared unconstitutional, said in part:

"Acts of Congress are the supreme law of the land only when made in purusance of the Constitution, while treaties are declared to be so when made under the authority of the United States. * * * We do not mean to imply that there are no qualifications to the treaty-making power; but that must be ascertained in a different way. * * * and it is not lightly to be assumed that, in matters requiring national action, 'a power which must belong to and somewhere reside in every civilized government' is not to be found. * * * *No doubt the great body of private relations usually falls within the control of the state, but a treaty may override its power.*" (Emphasis ours.)

It has been held that treaties are to be taken in their ordinary meanings as understood in the public law of nations and not any artificial or special sense impressed upon them by local law.

Santovincenzo v. Egan, 284 U. S. 30.

Geoffrey v. Riggs, 133 U. S. 58.

United States v. D'Auterive, 10 Howard 609, 13 Law Ed. 560.

Treaties should be so construed as to uphold the sanctity of public faith.

Ward v. Race Horse, 163 U. S. 504.

And in construing a treaty, its history should be consulted.

Cook v. United States, 288 U. S. 102.

Words with plain meaning cannot be rejected as surplusage.

Foster v. Neilson, 7 Law Ed. 415.

Treaties are to be construed in a broad and liberal spirit and, where it fairly admits of two constructions, that one is preferred which enlarges rather than limits rights which may be claimed under such treaty.

Shanks v. DuPont, 7 Law Ed. 666.

Jordan v. Tashiro, 278 U. S. 123.

Asakura v. Seattle, 265 U. S. 332.

Geoffrey v. Riggs, 133 U. S. 58.

Bacardi Corp. v. Domenach, 311 U. S. 150.

Treaties are to be construed more liberally than private agreements, and it is permissible to look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties.

Choctaw Indians v. United States, 318 U. S. 423.

Because treaties are solemn obligations entered into between nations for the interest of civilization, and as their main object is to avoid war and secure a lasting peace and promote a friendly feeling, they should be interpreted in that broad and liberal spirit which is calculated to make for the existence of a perpetual amity.

Tucker v. Alexandroff, 183 U. S. 424.

We are then required to give a broad and liberal interpretation to the United Nations Charter in determining what effect, if any, it has in the instant case. It is not an answer to say that we are seeking a dangerous extension of treaty-making powers and encroaching upon the private conduct of individuals. If the treaty requires that the Courts in Iowa prevent racial discrimination,

then the Iowa Courts must do so, regardless of how they may personally feel. If the applicable portions of the Charter which we have hereinabove quoted indicate that the United States Government considers that one of the basic causes of war is racial discrimination within its own borders, as well as within the borders of other countries, and enters into a solemn treaty announcing that to be a fact, then it becomes a supreme law of the land and under Article 6 of the Constitution it is binding upon the Courts of Iowa.

We state that the United Nations Charter is the condensation of the highest thoughts and ideals of the greatest minds in the world honestly seeking to prevent another holocaust such as the one from which we had just emerged at the end of World War II when the Charter was entered into. As indicated by the Preamble and by the other provisions quoted, it is important to promote self-respect of individuals and to prevent racial discrimination in any way, and, accordingly, each of the member nations bound themselves under Article 55 to promote and in Article 56 to take joint and separate action for the achievement of the purposes therein set out.

This is not a novel suggestion and has been discussed in the Courts in *Perez v. Lippold,* 32 Cal. 2d 711; *Namba v. McCourt,* 153 Ore. 579, 204 Pac. 2d 569; *Curran v. City of New York,* 77 N. Y. S. 2d 206; *Fujii v. California,* 242 Pac. 2d 617, and *Oyam v. California,* 332 U. S. 632. See also 34 Ia. L. Rev. 1.

In the *Oyam* case special concurring opinions were filed by Mr. Justice Murphy, Mr. Justice Rutledge, and Mr. Justice Black. We quote:

"Moreover, this nation recently pledged itself, through the United Nations Charter, to promote respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, and religion. The Alien Land Law stands as a barrier to the fulfillment of that national pledge. Its inconsistency with the Charter, which has been duly ratified and adopted by the United States, is but one more reason why the statute must be condemned.

"There are additional reasons why that law stands as an obstacle to the free accomplishment of our policy in the international field. One of these reasons is that we have recently pledged ourselves to cooperate with the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion. How can this nation be faithful to this international pledge if state laws which bar land ownership and occupancy by aliens on account of race are permitted to be enforced?"

Slightly paraphrasing these two separate quotations from the concurring opinions of the *Oyam* case, we urge that the purposes of the United Nations Charter cannot be fulfilled if the racially restrictive covenant in question can be used as a defense to the conduct of the cemetery. If the cemetery is to prevail, it is because petitioner married an American Indian rather than a member of the Caucasian Race. It logically must follow that, while the cemetery could not avoid the payment of damages if it had acted in a similar fashion against one whose husband was a member of the Caucasian Race, yet, nonetheless, it can avoid the payment of damages to this petitioner because of an interracial marriage. The Iowa Court

is tolerating this discrimination and, at least indirectly is punishing this petitioner because she married a non-Caucasian. The Iowa Court has therefore violated the basic and very fundamental concepts of equality not only announced but also pledged by the United Nations Charter and all of the member nations of which the United States is one.

The United Nations Charter does prohibit the Iowa Court from allowing the cemetery to raise a racially discriminatory covenant as a defense to this action.

Finally we direct our argument to the proposition that the racially restrictive covenant in question and the action of the Iowa Courts in allowing it to be used as a defense is clearly contrary to the public policy of the United States, and we do not need to search far to find that public policy.

The first and clearest indication is the United States Constitution itself, and with particular reference to the Fourteenth Amendment under the equal protection clause. Another clear pronouncement of public policy can be found in the *Civil Rights Act,* 8 U. S. C. A. 41, et seq., and, while the petitioner is not claiming a right under that Act, nonetheless, it is a pronouncement by the United States Congress indicating a public policy against racial discrimination. The next place where the public policy is clearly defined is in the decisions of the United States Supreme Court, with particular reference to the *Shelley, Hurd,* and *Barrows* cases hereinbefore cited. If further search is needed, we again find a pronouncement of the public policy of the United States Government in the

United Nations Charter under the sections thereof hereinbefore set out.

The Iowa Court admitted some difficulty in answering this phase of our argument, but ultimately decided that, since they were in some doubt, they would therefore not extend public policy far enough to assist the petitioner in this case.

We consider that the public policy of the United States is clearly defined and does not need any extension to apply to the facts of this case.

Once more we reiterate that we are not urging that the public policy or the Constitution or the United Nations Charter or the decisions of this Court are intended to control the contracts voluntarily made and adhered to between individuals. We are not saying that the cemetery cannot have such a restrictive clause in its contract, nor are we saying that the cemetery cannot refuse to sell lots to everyone not a member of the Caucasian Race.

> *Dorsey v. Stuyvesant Town Corp.*, 299 N. Y. 512, 87 N. E. 2d 541, 14 A. L. R. 2d 133; certiorari denied 339 U. S. 981.

What we are urging is that, where there is no longer any voluntary adherence and the matter comes before the State Courts, then the public policy of the United States controls those State Courts.

This Court has specifically stated that the public policy of the United States is to protect basic human rights against discriminatory action.

> *Hurd v. Hodge*, 334 U. S. 24, 35, 36.

CONCLUSION

That petitioner is being discriminated against because she married an American Indian cannot logically be denied. The restrictive clause in the very contract in question is racially discriminatory in so many words. The cemetery did, in fact, discriminate against the petitioner and must rely upon the very discriminatory clause in question to avoid a trial on the merits before a jury in this suit for damages. The cemetery so far, with the rulings of the Iowa Courts, has been successful in avoiding such a trial by waving the discriminatory covenant before the judicial eyes of the Iowa Courts which have then said that such a clause is a valid defense to this action. All attempts to discount the discrimination by the Iowa Courts must fail. If petitioner cannot try her case on its merits to a jury, it will be solely and only because the Iowa Courts have given vitality to the restrictive covenant in question by allowing the cemetery to use it as a defense.

The federal questions are substantial, the precise question has never before been decided, and it is therefore respectfully submitted that this Court has jurisdiction and good reason to grant the writ and review the decision of the Iowa Court.

Respectfully submitted,

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